

Exhibit G

Deposition Transcript of Dr. Anthony Trabue, M.D.

In The Matter Of:

Kayla Gore v.

William Byron Lee

Anthony Traube, PH.D.

May 21, 2020



Min-U-Script® with Word Index

1 **UNITED STATES DISTRICT COURT**
2 **MIDDLE DISTRICT OF TENNESSEE**
3 **NASHVILLE DIVISION**

3 -----X

4 **KAYLA GORE; JAIME COMBS; :**

5 **L.G.; AND K.N., :**

6 **Plaintiffs, : Case No.**

7 **v. : 3:19-CV-00328**

8 **WILLIAM BYRON LEE, in his official :**

9 **capacity as Governor of the State of :**

10 **Tennessee; and LISA PIERCEY, in her :**

11 **official capacity as Commissioner of the :**

12 **Tennessee Department of Health, :**

13 **Defendants. :**

14 -----X

15
16 **REMOTE VIDEOTAPED DEPOSITION OF**

17 **ANTHONY TRABUE PhD**

18 **Thursday, May 21, 2020**

19 **Tennessee**

20 **12:00 noon**

21
22 **Job No.: 2020-85188**

23 **Pages: 1 - 110**

24 **STENOGRAPHICALLY REPORTED BY:**

25 **GISELLE MITCHELL-MARGERUM, RPR, CRI, CCR, LCR**

1 Deposition of ANTHONY TRABUE, held remotely,
2 via videoconference at:

3
4
5 Tennessee

6
7
8
9 Pursuant to agreement, before Giselle
10 Mitchell-Margerum, Registered Professional Reporter,
11 Certified Reporting Instructor, Licensed Court Reporter
12 (TN), Certified Court Reporter (GA), and Notary Public
13 (Washington, D.C.).

A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS:

MERCHANT & GOULD P.C.

JOHN WINEMILLER, ESQ.

800 S. Gay Street, Suite 2150

Knoxville, TN 37929

(865) 380-5960

ON BEHALF OF DEFENDANTS:

OFFICE OF THE ATTORNEY GENERAL OF TENNESSEE

DIANNA BAKER SHEW, ESQ.

PO Box 20207

Nashville, TN 37202

(615) 532-1969

ALSO PRESENT:

OMAR GONZALEZ-PAGAN

SASHA BUCHERT

PUNEET KOHLI

SARA SEDGWICK

SUNG JAE LIM

DANIEL BURKE

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WINEMILLER**

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1 P R O C E E D I N G S

2 (Witness sworn.)

3 MR. WINEMILLER: Thank you.

4 Couple stipulations before we start.

5 Counsel have stipulated that all

6 objections are reserved, except as to

7 form.

8 Is that right, Ms. Shew?

9 MS. SHEW: That's correct.

10 MR. WINEMILLER: Okay. And,

11 also, this deposition will not be

12 recorded.

13 Dr. Trabue, good afternoon. Would

14 you --

15 THE WITNESS: Good afternoon.

16 MR. WINEMILLER: I'm John

17 Winemiller. I represent the plaintiffs

18 in this matter. And I'm accompanied

19 today -- at least, virtually, I am, by

20 Omar Gonzalez-Pagan, Sasha Buchert, and

21 Puneet Kohli.

22 THE WITNESS: Okay.

23 MR. WINEMILLER: Counsel, would

24 you make appearances?

25 MS. SHEW: Yes. Dianna Shew,

1 with the Attorney General's office, on
2 behalf of the defendants. Accompanied
3 today by my colleagues, Sara Sedgwick,
4 and Jae Lim.

5 MR. WINEMILLER: All right.

6 ANTHONY TRABUE PhD

7 Having been duly sworn testified as follows:

8 EXAMINATION BY MR. WINEMILLER:

9 Q. Dr. Trabue, would you state your
10 full name for the record, please?

11 A. Anthony Edward Dupuy -- that's
12 D-U-P-U-Y -- Trabue. I usually don't use that
13 last one. That was a bonus given by my
14 parents in 1948. So I have to own it.

15 Q. Well, it's a good southern name. I
16 appreciate it.

17 A. Yeah.

18 Q. Would you provide your address for
19 the record, please?

20 A. It is 2201 Murphy Avenue, Suite 104,
21 in Nashville.

22 Q. And that's your business address?

23 A. Yes.

24 Q. Thank you. Couple of ground rules
25 to this deposition, just to try to make it go

1 as smoothly as possible.

2 Probably the first, and most
3 important one, is that you and I need to work
4 very hard not to speak on top of each other,
5 because the court reporter is taking every
6 word we say down, and we would like to have a
7 clean record.

8 So, I am going to ask you to
9 wait to begin your answer until I finish my
10 question. And I'll attempt to wait until you
11 are finished with your answer before I ask the
12 next question.

13 And I understand that with
14 video, there is sometimes a lag, and I'll
15 apologize in advance if I step on your toes.
16 And I'll just be quiet and let you finish your
17 answer and then proceed.

18 Does that sound good to you?

19 A. I'll try not to step on yours
20 either. We can get this done.

21 Q. Okay. This isn't a marathon. If
22 you need to take a break at any time, just
23 please let me know. The only stipulation I
24 would have is that we need to have you answer
25 whatever question is on the floor before we

1 take that break.

2 A. Yes.

3 Q. Okay?

4 A. Yes.

5 Q. Okay. And your attorney, Ms. Shew,
6 may have some objections. Unless she
7 instructs you to answer -- excuse me -- not to
8 answer a question, you need to answer my
9 questions, even if she objects.

10 Is that clear?

11 A. Clear.

12 Q. Okay. Will you tell me if you do
13 not understand any question of mine?

14 A. I will.

15 Q. Will you tell me if my question is,
16 in your mind, ambiguous in any way?

17 A. I will.

18 Q. Will you tell me if you need more
19 information to answer any question I ask
20 today?

21 A. Yes.

22 Q. Will you make every effort today to
23 answer all my questions, fully and completely?

24 A. As much as I can, yes.

25 Q. Thank you. Will you make every

1 effort to answer all my questions accurately
2 and honestly?

3 A. Yes.

4 Q. Is there any reason why you can't do
5 all these things I've just asked about?

6 A. None.

7 Q. Have you taken any medications today
8 that would prevent you from giving true,
9 accurate, and complete testimony today?

10 A. No.

11 Q. Seeing that you're wearing your
12 scrubs, I think that's a good answer to hear.

13 A. Yes.

14 Q. Thank you. Now, Dr. Traube, you've
15 served as an expert witness several times,
16 haven't you?

17 A. Yes.

18 Q. Approximately how many times have
19 you served as an expert witness?

20 A. I really do not know, and I don't
21 know how to answer that for you. I've done
22 this since the 1980s, and that's a long time.

23 I would think -- now, I haven't been in a
24 courtroom in at least 10 years, as far as
25 testifying.

1 I've probably testified in a
2 courtroom eight or 10 times over 40 years.
3 But it's been a while. And that's as best I
4 can tell you.

5 I get cases handed me all the time,
6 but most of these are opinions that I have
7 rendered back to the attorneys, and that's the
8 end of that.

9 But, yeah. I'll probably get -- I
10 don't know -- nine or 10 cases given to me a
11 year, just to study it and render an opinion.
12 And that's -- that's -- that's a pretty
13 important job sometimes; just to tell the
14 lawyer what I think about the case.

15 But, as far as going to deposition,
16 it's probably been at least five years or more
17 since I've done a deposition. Maybe more than
18 that. And it's been twice that long since
19 I've been in the courtroom.

20 So, of course, they don't go to
21 court all that much. So that's the best
22 answer I can give you.

23 My father and brother were
24 attorneys, and I met lawyers when I was young,
25 and I worked with them off and on since the

1 early '80s, really. That's the best answer I
2 can give you.

3 Q. Okay. And these multiple times a
4 year in which you're handed a case to offer an
5 opinion, what types of cases are these?

6 A. Virtually -- well, I would say, 90
7 percent medical malpractice; and 10 percent
8 injury cases, where a woman in a wreck, or an
9 accident of some sort, would be pregnant. So,
10 I would get those two types of cases.

11 Q. Have you ever offered -- excuse
12 me -- have you ever served as an expert
13 witness in any type of a case, other than a
14 medical malpractice case or a personal injury
15 case?

16 A. That's right. I was an expert in
17 an -- a case in the early '90s for the state
18 of Tennessee. That's right. It's about
19 abortion policies. That was almost 30 years
20 ago. Right.

21 Q. Is that the case of Planned
22 Parenthood of Middle Tennessee v. Sundquist?

23 A. Probably.

24 Q. Okay. And did it concern the
25 parental consent provision of Tennessee's

1 abortion statute at the time?

2 A. It was parental consent, and the
3 doctor needs to talk to the patient before
4 they operate on them. And -- I forget, there
5 was two or three points that were involved.
6 It's been a while.

7 Q. Okay. I just wanted to make sure
8 we're talking about the same case.

9 A. Yes.

10 Q. Now, where have you given the expert
11 testimony, or -- excuse me -- where have you
12 served as an expert witness over these -- over
13 the course of your career?

14 And by "where," I mean in which
15 counties.

16 A. I think all the times I've been in
17 court, it's either been in Nashville or
18 Franklin. I'm not even sure I've been in
19 court in Franklin. I would say probably
20 Nashville.

21 Q. Okay. And is that state court?

22 A. You know, you're the lawyer. I go
23 where they take me, you know. I don't keep a
24 record of all these things.

25 Q. Okay. To your recollection, have

1 you ever been an expert in a case that was
2 filed in federal court?

3 A. I do not know.

4 Q. Okay. And in the cases where you've
5 served as an expert witness in a medical
6 malpractice matter, do you generally serve as
7 an expert on the plaintiff's side, or the
8 defendant's side?

9 A. Mostly defendant. I probably
10 haven't -- and, again, I've never been to
11 court on a plaintiff's case, because they've
12 been settled. But I have -- I've rendered
13 opinions on plaintiff's cases over the years.

14 I'd say probably 90/10 defendant.
15 But, a few of both -- a few plaintiff's, here
16 and there.

17 Q. Okay. And is that of the medical
18 malpractice cases, or the --

19 A. Medical malpractice.

20 Q. Okay. And how about the personal
21 injury cases?

22 A. Oh, they're always on the -- on the
23 plaintiff's side.

24 Q. Okay.

25 A. They would all be --

1 Q. Thank you.

2 A. -- for the woman's attorney. Right.

3 Q. Okay. You mentioned going to court.
4 And when you went to court, did you give sworn
5 testimony in court?

6 A. Yes.

7 Q. Okay. And have you given sworn
8 testimony through the form of a declaration
9 before?

10 A. Excuse me? The declaration?

11 Q. Have you signed a declaration under
12 oath in -- that states your opinion?

13 A. You'd have to ask Ms. Shew. I've
14 signed something and faxed it to her. I did.
15 Is that -- is that what you're talking about?

16 Q. I'm actually asking about these
17 other cases that you have testified to serving
18 as a witness in.

19 A. Yes.

20 Q. In those cases, did you submit a
21 signed, sworn declaration?

22 A. I can't answer that. You'd have to
23 ask the lawyers. Dixie Cooper, or people that
24 have used me. You know.

25 I'm sorry. I just -- I don't --

1 nobody told me that I was doing the wrong
2 thing when I -- when I ever went to a
3 courtroom.

4 Q. Yeah. And I'm not suggesting that,
5 Dr. Trabue.

6 A. Yes.

7 Q. I'm just asking some background
8 questions. Have you given testimony at a
9 deposition, like we're in today, before?

10 A. I've never given one on Zoom, if you
11 ask that. I've always done it in person.

12 Q. Okay. About how many times have you
13 given testimony in a deposition?

14 A. I would say maybe 20. Maybe --
15 maybe more than that. It's been a long time.
16 It's been -- this is the first deposition I
17 think I've given in over five years.

18 Q. Okay. Thank you. Have you ever
19 given sworn testimony on an occasion other
20 than when you were serving as an expert?

21 A. Not that I know of.

22 Q. Has a court ever excluded your
23 opinion testimony?

24 A. Not that I know of.

25 Q. Okay. Has a court ever limited the

1 scope of your opinion testimony?

2 A. I don't know.

3 Q. Okay. Have you personally been
4 involved in lawsuits as a party?

5 A. No.

6 Q. Okay. We have a number of -- oh,
7 please go ahead.

8 A. I have -- I have had malpractice
9 suits filed on me, so I would be a party in --
10 two different times -- two times that I can --
11 I've had other cases that were filed and
12 quickly withdrawn, that I never did anything
13 with.

14 But there've been two times that
15 I've given depositions when I was a defendant.

16 Q. Okay. Do you remember the years of
17 those cases?

18 A. Well, the first would be in the
19 early '80s. I'm thinking '82 or '83. And the
20 second one would have been about 20 years ago,
21 in 2001. Sometime like that.

22 Q. And those were both medical
23 malpractice cases?

24 A. Yes, Sir.

25 Q. Okay. Thank you. We have pre --

1 premarked a number of exhibits. And I
2 understand you don't have printed copies of
3 them. So what we'll do is, we have a way of
4 putting them up on the screen --

5 A. Actually, I have my -- I've got them
6 emailed to me. I can pull up whichever one
7 you want me to pull up.

8 Q. Oh. Good. Well, let's do that.
9 Let's start, actually, with what's been
10 labeled "Exhibit 2." This is titled,
11 "Defendants' Additional Expert Disclosure."

12 (Exhibit 2 marked for identification)

13 A. Just a second. Let me just -- okay.
14 Now -- okay. I've got -- I've actually opened
15 one and two that really -- is that where you
16 want me right now?

17 What would you like me to look at?

18 Q. Let's start with two and then we're
19 going to go to one.

20 A. Okay. I've got two.

21 Q. Okay. So, I'll represent to you
22 that this is a document filed by the
23 defendants, called, "Defendants' Additional
24 Expert Disclosure." And, as you can see
25 there, the defendants -- right.

1 "Defendants hereby disclose
2 that they intend to call Dr. Anthony E.D.
3 Trabue, M.D. to testify as an expert witness
4 at the trial of this action."

5 A. I see it.

6 Q. Do you see that?

7 A. Yes.

8 Q. Okay. And do you understand that
9 you are here because you have been identified
10 as an expert witness on behalf of the
11 defendants in this case?

12 A. Yes.

13 Q. Okay. Now, if you would look at
14 Exhibit 1?

15 A. Yes.

16 (Exhibit 1 marked for identification)

17 Q. And you understand that this is a
18 Deposition Notice for your deposition here
19 today? Is that right?

20 A. That's right.

21 Q. All right. And you understand
22 you're giving testimony today for use in the
23 lawsuit of Gore v. Lee et al.?

24 A. Right.

25 Q. Okay. In your own words,

1 Dr. Trabue, what is this lawsuit about?

2 A. I was approached by one of the
3 state's attorneys, if I would be willing to
4 discuss the nature of a birth certificate.
5 And this attorney was given my name by, I
6 think, either a patient, or a parent of a
7 patient, or a friend of a patient, that knew
8 me and knew that I'd done some legal
9 consultations.

10 And that was -- this attorney just
11 was -- and he came and asked me if I would
12 look at it, and I said that I would.
13 That's -- that's how it started.

14 Q. Okay. And when was that?

15 A. It was probably in the last several
16 months.

17 Q. And who was the attorney that
18 approached you?

19 A. It's Dr. Jae Lim.

20 Q. Okay.

21 A. I mean Mr. Jae Lim. Yes.

22 Q. And these next questions, I'm not
23 going to ask you about the substance of your
24 discussions with the defense counsel. They
25 are more background fact questions.

1 So, my question is, how many
2 times have you spoken with defense counsel
3 about this case?

4 A. Well, I'll say three times. The
5 first with Mr. Lim. The second with Mr. Lim
6 and one of his associates. I'm not sure if
7 there was Ms. Shew, or one of the other ones.

8 And the third one was a -- a call
9 with Dr. -- with Mr. Lim and Ms. Shew, and
10 another associate. I think three different
11 times.

12 Q. Do you recall when those three
13 conversations took place?

14 A. Well, I think the last one was
15 Monday, I think. And then I think there was
16 one about a week ago -- maybe two weeks ago.
17 It was in the last week or two. And then the
18 first one was several months ago.

19 Q. Dr. Trabue --

20 A. I think -- I guess this is -- I'm
21 just looking. This is dated March 19th. So
22 that would be probably a week or so after my
23 first conversation with Mr. Lim, I would
24 think.

25 Q. Okay. Dr. Trabue, what did you do

1 to prepare for today's deposition?

2 A. Just about nothing. I just looked
3 at -- I looked over what I was -- what I had
4 said in my -- in my -- what we've sent you
5 all. What -- my declaration. I just looked
6 at it. Looked at it again.

7 Q. Did you look at any other documents?

8 A. No, Sir.

9 Q. Okay. Before your work on this
10 case, had you ever worked with the Office of
11 the Attorney General for the State of
12 Tennessee?

13 A. If that case -- in the Sundquist
14 case you mentioned, that would have been the
15 only one.

16 Q. Okay. And before you worked on this
17 case, have you ever had -- have you ever
18 worked with any of the attorneys -- Ms. Shew,
19 Mr. Lim, or the other person you met with --
20 outside of their roles with the state?

21 A. No, Sir.

22 Q. And --

23 A. I'm sorry. I would just say I'm
24 terrible with names. And I'm embarrassed that
25 I can't remember the other one's name. But

1 there were two ladies and one man that I've
2 talked to.

3 Q. Okay.

4 A. The other woman, I can't -- I can't
5 remember.

6 Q. Was it Ms. Sedgwick?

7 A. That sounds right.

8 Q. Okay.

9 A. When you get to be my age, you'll
10 know what I'm talking about. You remember
11 faces, but not names. So...

12 Q. Fair enough. Fair enough. Other
13 than the work on the Sundquist case that
14 you've testified about earlier, have you done
15 any other work for the state of Tennessee?

16 A. No, I have not.

17 Q. Okay. Would you look, Sir, at
18 what's been marked as "Exhibit 3?" This is
19 the "Declaration of Dr. Anthony E.D. Trabue,
20 M.D.."

21 (Exhibit 3 marked for identification)

22 A. Okay.

23 Q. Is this, in fact, the declaration
24 that you signed?

25 A. Yes.

1 Q. Okay.

2 A. I do have a copy of it here. Right.

3 Q. And it is five pages long. Is that
4 correct?

5 A. Correct. Yes, Sir.

6 Q. And it has 26 numbered paragraphs?

7 A. Yes.

8 Q. And I'm looking at page two. Does
9 your copy have two paragraphs that are each
10 numbered "8?" The Paragraph --

11 A. Yes.

12 Q. Okay.

13 A. There are two "eights" here.

14 Q. Those things happen. Can we agree
15 to refer to the first paragraph eight as "8A,"
16 and the second paragraph eight as "8B?"

17 A. Okay.

18 Q. Okay. That will make things a
19 little bit easier. And, Dr. Traube, can you
20 confirm that the last page of the PDF -- which
21 is actually the sixth page of this exhibit --
22 bears your signature?

23 A. That is my signature.

24 Q. And you dated this document on the
25 14th day of May. Is that correct?

1 A. Yes, Sir.

2 Q. Is that the approximate date of the
3 second time you spoke with the lawyers on the
4 state side?

5 A. It would have been a day or so after
6 that, maybe. I mean -- I don't know what you
7 mean by "conversations." If it means like,
8 "I'm going to send you something;" and I say
9 yes. And then they send me something, and
10 then I'll say, "I'm sending it back." And
11 they'll say, "Okay."

12 I don't -- we've had more than three
13 conversations. But, as far as substantive
14 conversations, I think there've been three.

15 Q. Okay. Thank you for that
16 clarification.

17 A. Yes.

18 Q. Do you recall whether the second of
19 those substantive conversations occurred
20 around May 14th?

21 A. I think it was -- it was maybe
22 before then. It was in my office.

23 Q. Okay.

24 A. And you -- it was in my office
25 with -- with Mr. Lim and one of the other

1 ladies. And it was -- it was -- I can't tell
2 you the date -- you know. I might be able to
3 tell you the date.

4 I mean, they may have the date on
5 their books, but -- okay. I've got something
6 down on April 22nd. And that -- I haven't
7 talked to any other lawyers but these people
8 for the last month or two.

9 So, something happened April 22nd,
10 at 2:30 in the afternoon. And then we dated
11 this other one March 19th. So it would have
12 been probably the week leading up -- okay.

13 I had an 8:30 office meeting on -- I
14 see an 8:30 office meeting on February 14th.
15 And then, I have a 1:00 o'clock meeting with
16 lawyers on February 27th.

17 So, the February 14th meeting was
18 probably Mr. Lim. And the 27th was the
19 afternoon when I met with several lawyers.
20 And then, the teleconference was -- so there
21 may have been four.

22 The teleconference was Monday. And
23 then there may have been a -- what looks like
24 a teleconference happened on April 22nd with
25 the lawyer. And that would have been them.

1 So that's -- that's as best I can tell you,
2 Sir.

3 Q. That's very precise, and I
4 appreciate that.

5 A. Yes, Sir.

6 Q. Is the document that's marked as
7 "Exhibit 3" the only expert report you have
8 prepared in this case?

9 A. Yes.

10 Q. And this document, Exhibit 3, is
11 titled, "Declaration." Is that correct?

12 A. Yes.

13 Q. Okay. And you -- but you also
14 signed a report on March -- in March --
15 March 21st. Is that correct?

16 A. Mine's dated March 19th. Probably
17 the same report.

18 Q. Okay.

19 A. Actually, it says "March 23rd" on
20 the back. I signed it -- I guess I -- maybe
21 they gave it to me on the 19th and maybe --
22 I faxed it to them -- you know, that's two
23 months ago. But that would have been that.

24 Q. Okay. Dr. Traube, you say you were
25 retained. And I'm looking right now at the

1 second paragraph of your declaration,
2 Exhibit 3.

3 You state you were retained to
4 provide your expert medical opinion regarding
5 how a baby's sex is determined at the time of
6 birth. Correct?

7 A. Yes.

8 Q. Is that still an accurate
9 description of the scope of your assignment in
10 this case?

11 A. Yes.

12 Q. Okay. And is that still an accurate
13 description of the scope of the expert medical
14 opinion you intend to offer in this case?

15 A. Yes.

16 Q. Okay. You stated -- your
17 declaration states the -- excuse me. Okay.

18 You also say that you state
19 your declaration states the opinions you may
20 provide at trial, and the basis for those
21 opinions. Is that correct?

22 A. Yeah. Paragraph three says, "baby's
23 sex is determined at the time of birth." And
24 I may provide at trial, and basis for those.
25 I'm prepared to state the opinions. Sure.

1 Q. Okay.

2 A. Basic information. Yes, Sir.

3 Q. Okay. And I am going to ask you
4 about the various sections of your
5 declaration, just to make sure I understand
6 what your opinion is.

7 Do you state any opinions in
8 paragraphs one through 8A of your declaration?

9 A. Would you say -- say that one more
10 time? I'm sorry.

11 Q. Sure. I can just go through each of
12 the paragraphs. That might be a little
13 simpler.

14 Do you state any opinions in
15 paragraph one of your declaration?

16 A. Do I have an opinion of that?

17 Q. No. Do you state any opinions? Are
18 any of your opinions recited in paragraph one?

19 A. Yes. It's personal knowledge. That
20 would be correct.

21 Q. Okay. It's -- my question, Sir, is
22 whether part of the expert opinion you were
23 rendering in this case is presented in
24 paragraph one.

25 A. No.

1 MS. SHEW: Object to the --
2 object to the form.

3 Q. Same question for paragraph two.

4 MS. SHEW: I'm just going to
5 make a standing objection and not keep
6 interrupting this line of questioning.

7 MR. WINEMILLER: That's --
8 thank you.

9 You may answer.

10 THE WITNESS: Well, these
11 are -- these are accurate statements,
12 and -- and are you asking whether I have
13 an opinion about paragraph two?

14 BY MR. WINEMILLER:

15 Q. No, no. I'm asking whether
16 paragraph two conveys your expert opinion in
17 this case.

18 A. No.

19 Q. Does paragraph three state your
20 expert opinion in this case?

21 A. Yes.

22 Q. And what is the opinion that you
23 state in paragraph three?

24 A. It regards how a baby's sex is
25 determined at time of birth. And I have an

1 opinion about how I would do that.

2 Q. Oh. And I understand that. I'm
3 just asking, in paragraph three, itself, do
4 you state what that opinion is.

5 A. I don't -- you know, it's an odd way
6 to ask the question, but as I understand the
7 question, I think it's an accurate statement
8 in that I would provide an opinion regarding
9 how a baby's sex is determined.

10 But I have no opinion regarding that
11 statement itself.

12 Q. Okay. I'm sorry that my questions
13 aren't being clear. You've got a section in
14 your declaration, starting at page 18, that's
15 titled, "Expert Opinions." Correct?

16 A. All right.

17 Q. And you have a section in your
18 declaration, before paragraph 8B, titled,
19 "Qualifications." Is that right?

20 A. Yes.

21 Q. And then the first eight paragraphs
22 of the declaration provide other information.
23 And so, what I'm trying to understand,
24 Dr. Trabue, is how paragraphs one through
25 eight are distinct from paragraphs 8B through

1 17, and 18 through 25.

2 And so, my precise question,
3 Sir, was whether any of your opinions are
4 stated in paragraphs one through 8A?

5 A. Okay. I think I -- I think I've got
6 you now.

7 Q. Okay.

8 A. I don't -- I don't think so. I did,
9 in paragraph four, say that I reserve the
10 right to revise and supplement this, just in
11 case I said something that I wish I hadn't.

12 But, no. I don't think I have -- I
13 don't think these are opinions. No, Sir.

14 Q. All right. Thank you. Sorry I was
15 confusing with that question, and that
16 occasionally happens. And I'll just do my
17 best to restate the question so that it's
18 clear.

19 A. Sure.

20 Q. Okay. And the section on
21 qualifications -- 8B through 17 -- do you
22 state opinions in that section of your report?

23 MS. SHEW: Object to --

24 Q. Sorry. That section of your
25 declaration.

1 MS. SHEW: Object to the form.

2 A. No, I do not think so.

3 Q. But you do state opinions, in the
4 section of your report entitled, "Expert
5 Opinions." Correct?

6 A. Yes.

7 Q. Okay. And I'm just going to ask two
8 more questions on this same line of questions.
9 This regards paragraph 18.

10 Does paragraph 18 state any of
11 your expert opinions?

12 MS. SHEW: Object to the form.

13 A. So, paragraph 18 -- the information
14 provided, I think, if I remember correctly
15 is -- was conversational. I don't think I
16 have any material information in my hand about
17 this, Sir.

18 But -- but it says, "information I
19 have been provided by the Defendants'
20 attorneys." And -- and I think, as we
21 discussed it, it was all in -- as far as what
22 happens at birth, and how sex is determined.

23 And those -- there will be opinions
24 there. Yes, Sir.

25 Q. Okay. Have you formed any other

1 opinions in this case, besides what is
2 contained in your declaration?

3 MS. SHEW: Object to the form.

4 A. No.

5 Q. Do you intend to offer any other
6 opinions in this case, beyond what you've
7 stated in your declaration?

8 A. No --

9 MS. SHEW: Object to the form.

10 A. No, Sir. I do not.

11 Q. All right. Thank you. Is your
12 expert declaration accurate, in all respects?

13 A. Yes.

14 Q. Is your declaration complete, in all
15 respects?

16 A. Oh gosh. I hope you can look back
17 at 42 years of law practice and say everything
18 you've done. But it's as complete as I can
19 tell you.

20 Q. Thank you. Is there anything you
21 want to change in your declaration?

22 A. No.

23 Q. Is there anything you want to
24 correct in your declaration?

25 A. No, Sir.

1 Q. Is there anything you want to delete
2 from your declaration?

3 A. No, Sir.

4 Q. Is there anything you wish to have
5 add -- excuse me. Is there anything you wish
6 you had added to your declaration?

7 A. No.

8 Q. Did you purposely leave anything out
9 of your declaration?

10 A. I did not.

11 Q. Do you feel you need to do any
12 additional work relating to your declaration?

13 A. No, Sir.

14 Q. Is your declaration a complete
15 statement of all your opinions in this case?

16 MS. SHEW: Object to the form.

17 A. Can you wait for one second? I need
18 to decline an incoming call.

19 Q. Okay. Sure.

20 A. I'm sorry.

21 Q. No worries.

22 A. Okay, I'm doing this with my iPhone.

23 Okay, I've got it out of the way. I'm sorry.

24 Ask that question again. I apologize.

25 Q. Sure. Is your declaration a

1 complete statement of all your opinions in
2 this case?

3 A. It is.

4 Q. Do you believe that your declaration
5 contains all the information for the courts
6 and jury to understand all the work you did in
7 this case?

8 A. Yes.

9 MS. SHEW: Object to the form.

10 Q. Do you believe that your declaration
11 contains all the information for the court or
12 jury to evaluate your opinion in this case?

13 MS. SHEW: Object to the form.

14 A. Yes.

15 Q. Do you believe that your declaration
16 contains all the information for the court and
17 jury to evaluate what you did for reliability?

18 A. Yes.

19 MS. SHEW: Object to the form.

20 Q. Dr. Traube, you are not offering
21 opinion -- an opinion on gender identity. Is
22 that correct?

23 A. Correct.

24 Q. In particular, you are not offering
25 an opinion on the etiology of gender identity.

1 Correct?

2 A. Correct.

3 Q. And you're not offering an opinion
4 on the nature of gender identity. Correct?

5 A. Correct.

6 Q. You are not offering an opinion on
7 gender dysphoria. Correct?

8 A. Correct.

9 Q. In particular, you are not offering
10 an opinion on the etiology of gender
11 dysphoria. Correct?

12 A. I'm not a counselor, Sir. It's hard
13 enough to keep women and babies alive before
14 they get here, and after that. But no, I do
15 no counseling.

16 Q. Okay. And you're not offering an
17 opinion on the treatment of gender dysphoria.
18 Correct?

19 A. Correct.

20 Q. Okay. You are not offering an
21 opinion on the process of gender transition
22 for transgender persons. Correct?

23 A. Correct.

24 Q. And you are not offering an opinion
25 on sexual orientation. Correct?

1 A. Correct.

2 Q. In particular, you are not offering
3 an opinion on the etiology of sexual
4 orientation. Correct?

5 A. Absolutely right.

6 Q. Okay. And you are not offering an
7 opinion on brain development and structure.
8 Correct?

9 A. You know, that's kind of a rabbit
10 hole to talk to an obstetrician about, because
11 often, we're blamed for problems that children
12 have as they develop in the first --
13 sometimes, after the first few years.

14 And I've been involved in civil
15 litigation, in that way. Not lately, but in
16 other years. But, no. As far as I'm
17 concerned, I think if we get a good healthy
18 baby here, we've done all we can do. So I'm
19 going to go that.

20 But, obstetricians do sometimes get
21 in the -- in the cross hairs of a child that's
22 not developing the way that the parents think
23 they ought to be developing.

24 Q. Okay. Let me try this. This might
25 be a better question. You are not offering an

1 opinion on sexual differentiation in brain
2 development and structure. Correct?

3 A. Correct.

4 Q. Okay. And you are not offering an
5 opinion on variations in brain development and
6 function as a result of exposure to sex
7 hormones. Correct?

8 A. Correct.

9 Q. Okay. And you're not offering an
10 opinion about the legal requirements for the
11 completion of birth certificates. Correct?

12 A. Correct.

13 Q. And, last question in this line.
14 You are not offering an opinion about the
15 legal uses of birth certificates. Correct?

16 A. Correct.

17 Q. Okay.

18 A. Can I say one thing at this point?

19 Q. Sure. Please.

20 A. I have not looked at a birth
21 certificate in probably 20 years. Because we
22 used to look at them all and have to sign
23 them, but they changed the law in Tennessee at
24 some point.

25 It's about 20 years ago -- maybe

1 late '90s, at some point, to where I'm no
2 longer in that loop. So, really, I don't -- I
3 don't really know what info goes -- what all
4 they include or exclude on a birth
5 certificate.

6 What I do is make a medical record.

7 Q. Okay. And I'll ask some questions
8 about that a little bit later this afternoon.

9 A. Okay.

10 Q. But thank you for that
11 clarification.

12 Right now, I'd like you to look
13 at what we've marked as "Exhibit 4." This is
14 one of your -- the two CVs that you provided.

15 (Exhibit 4 marked for identification)

16 A. Okay.

17 Q. Could you confirm that this, in
18 fact, is your CV?

19 A. It is.

20 Q. Okay. And then, flip over to
21 Exhibit 5.

22 (Exhibit 5 marked for identification)

23 Q. And can you confirm that this is
24 also a CV for yourself? This one in narrative
25 form?

1 A. Yes. That's kind of a bio that I
2 give attorneys to know who they are getting if
3 they want to use me.

4 Q. Sure. Sure. Thank you. Excuse me.
5 I want to go through some of your background
6 right now. Just as a part of the -- sort of
7 completeness.

8 Sir, what is your current
9 position?

10 A. My current position?

11 Q. Yes.

12 A. I'm in private -- I'm in private
13 solo practice of obstetrics and gynecology. I
14 am a professional corporation that I own,
15 since '83. I established it and went in solo
16 in '84.

17 I started -- I finished my residence
18 in '79 and went into practice, working for
19 another doctor, before I went off on my own.
20 And I've been solo ever since then.

21 So, I occasionally do what we call
22 "locums" work. Are you familiar with that?

23 Q. Yes, Sir.

24 A. For various locums people. I'm on
25 several directories, so I may moonlight here

1 and there. But, most of the time, I'm just
2 trying to take care of my patients right here.

3 Q. Okay. A bit about your background.
4 You went to Vanderbilt for both undergraduate
5 and medical school. Correct?

6 A. Correct.

7 Q. And, do I recall from your CV that
8 you actually were a -- was it a history major?

9 A. Yes. European history.

10 Q. Okay. Let's see. And you also did
11 your general surgery internship at Vanderbilt.
12 Correct?

13 A. Yes. That's right.

14 Q. Okay. And as part of that
15 internship, did you participate in rotations
16 through various departments at the hospital?

17 A. That's right.

18 Q. Okay. Do you recall what
19 departments you rotated through?

20 A. Well, I did eight months at
21 Vanderbilt. Four of those were in the
22 emergency rooms. Two of those were with the
23 orthopedics department. And another two, I
24 think -- I just can't remember -- maybe in
25 neurosurgery or something. It's been a while.

1 And then I did four months on the
2 surgery ward at the VA hospital.

3 Q. Okay. Thank you. And you did an
4 OB-GYN residency also at Vanderbilt. Correct?

5 A. Correct.

6 Q. Did you do any other residencies
7 anywhere?

8 A. No, Sir.

9 Q. Okay. Would you look back at
10 Exhibit 4? This is the first of the two CVs.

11 A. Yeah.

12 Q. Would you tell me what "ABOG" refers
13 to?

14 A. That's the American Board of
15 Obstetrics and Gynecology.

16 Q. All right. So that's when you
17 passed your boards?

18 A. Yes, Sir.

19 Q. Okay. And then, what were the
20 boards that you passed in December of '83?

21 A. That's -- oh. That's the
22 American -- it's the American College of
23 OB-GYN. You'd have to pass your boards, and
24 then you apply the next year to enter the
25 college.

1 Q. Okay.

2 A. So that was my -- so, I passed
3 boards at the end of '82, and entered the
4 college at the end of '83.

5 Q. Okay. You don't have to sit for two
6 sets of boards?

7 A. No, Sir.

8 Q. Okay.

9 A. And, you know, everybody after me --
10 within two or three years, the board -- the
11 boards I took were a lifetime award. You
12 didn't have to take it again.

13 And so, those fellas are -- we're
14 still board members, even though we haven't
15 had to retake boards. But all the young
16 people have to take it every five years.

17 So, my son is an internist and he
18 has to take boards every five years.

19 Q. Well, age has its privileges, I
20 guess.

21 A. You get old and fat. That's it.

22 Q. Okay. Dr. Trabue, do you have any
23 training in psychology?

24 A. No, Sir.

25 Q. Do you have any training in

1 psychiatry?

2 A. No.

3 Q. Do you have any training in
4 endocrinology?

5 A. Minimal.

6 Q. What does -- what does that minimal
7 training consist of?

8 A. Reproductive endocrinology.

9 Q. Okay.

10 A. I would not be qualified to treat a
11 person with thyroid disease or other pituitary
12 tumors. Things like that. I would be helpful
13 in people with ovarian function.

14 Q. Okay.

15 A. Ovarian failure. Menopause
16 treatment. Like I said, my -- I would
17 interface as a very low level endocrine
18 function. That would be what I would be.

19 Q. Okay. Thank you. Do you have any
20 training in neurobiology?

21 A. None.

22 Q. Do you have any training in gender
23 identity?

24 A. No.

25 Q. Do you have any training in gender

1 dysphoria?

2 A. No.

3 Q. Okay. And in your materials -- I'm
4 not seeing it right now -- you indicate that
5 you're licensed by the state of Tennessee.

6 Correct?

7 A. That's it.

8 Q. Okay. Are you licensed by any state
9 other than the state of Tennessee?

10 A. No.

11 Q. Okay. So it's correct to say that
12 you do not hold any other licenses other than
13 the license issued by the state of Tennessee?

14 A. That's right.

15 Q. Okay. And you are board certified
16 in obstetrics and gynecology. Correct?

17 A. Yes.

18 Q. And that's what you just explained
19 to me?

20 A. Yes.

21 Q. Okay. Do you have any
22 certifications, other than the board
23 certification from -- all right -- in -- or
24 from the American College of -- let's see if I
25 got this right -- Obstetrics and Gynecology?

1 A. I do not.

2 Q. Okay. And, let's see. In your
3 declaration, you say that you were elected as
4 a fellow of the American College of Obstetrics
5 and Gynecology in 1983. That being elected as
6 a fellow is what happens about a year after
7 your boards are taken?

8 Is that right?

9 A. Yeah. That's right.

10 Q. Okay. Do you consider the American
11 College of -- let me ask you this question
12 first.

13 Is it the American College of
14 Obstetrics and Gynecology? Or the American
15 College of Obstetricians and Gynecologists?

16 A. Oh Lord. I've got them right up
17 here. Just a second.

18 Okay. It's -- the board is the
19 American Board of Obstetrics and Gynecology.
20 And the College is Obstetricians and
21 Gynecologists.

22 Q. Okay. Just wanted to clear that up.

23 A. Yes.

24 Q. Make sure I wasn't saying the wrong
25 thing.

1 Do you consider the American
2 College of Obstetricians and Gynecologists to
3 be a reputable source of information for
4 people in your field?

5 A. It depends on the day. Because they
6 put out papers all the time and then change
7 them a day or two later. The things that the
8 American boards and college puts out is kind
9 of a moving target.

10 But I think everything they put,
11 they try to be current. And that's why --
12 it's kind of like this COVID plague we're in
13 now. We hear different info all the time.

14 So, it's maybe not that bad, but
15 like I say, sometimes, I don't pay too much
16 attention to what they say, because they --
17 they may have a better position; a more clear
18 position.

19 See, they'll have committee
20 opinions, and then they'll have -- they have
21 all these different rankings of things that
22 will come out.

23 And I think the committee opinion
24 will be the most authoritative, but they have
25 a lot of other bulletins -- practice

1 bulletins, and things like that. They'll lose
2 you with things.

3 But, no. And, everything changes,
4 so, I think there's -- they are very helpful.
5 I'll say that. I will say they are very
6 helpful.

7 Q. Okay. Are you familiar with the
8 Committee on Adolescent Healthcare of the
9 American College of Obstetricians and
10 Gynecologists?

11 A. You know, I don't think I have read
12 much of them lately. Every now and then --
13 particularly if I have an adolescent
14 pregnancy -- I will refer to them. But I
15 really haven't had one in a while. So...

16 Q. Okay. By chance, are you aware that
17 the Committee on Adolescent Healthcare of the
18 ACOG issued a committee opinion on care for
19 transgender adolescents?

20 A. It's not surprising, but I sure -- I
21 haven't read it.

22 Q. Okay. Well, it's -- it's what we've
23 marked as Exhibit 6, if you want to take a
24 look at that.

25 (Exhibit 6 marked for identification)

1 MS. SHEW: Are you asking him
2 to read this?

3 MR. WINEMILLER: Well, I want
4 him to -- I'm going to ask him some
5 questions about it. So if he needs some
6 time to look it over, that's fine.

7 THE WITNESS: Let me look at
8 the abstract and see if that will help,
9 if possible. And if you start getting
10 technical, it will take a while. But --

11 MR. WINEMILLER: I only have
12 one or two questions about it. And if
13 after I ask those questions, you want to
14 go back and read the rest of the
15 document, that's certainly your right.

16 THE WITNESS: Okay. Why don't
17 you ask a question and see -- see what I
18 can do with it? And if not, I'll refer
19 to the document.

20 MR. WINEMILLER: Sure.

21 BY MR. WINEMILLER:

22 Q. Specifically, I'd like you to turn
23 to page four of the document. And you'll see,
24 at the bottom right of page four, there's
25 something called a "Glossary."

1 A. I see it. Yeah, I've got it.

2 Q. And I want to ask you about the
3 definition of "gender identity" that's
4 presented there. It defines gender identity
5 as:

6 "A person's fundamental and
7 innate sense of being male, female, or
8 somewhere in between."

9 Did I read that correctly?

10 A. Correct.

11 Q. Do you agree or disagree with this
12 definition?

13 A. I agree with it --

14 MS. SHEW: Object to the --
15 object to the form.

16 MR. WINEMILLER: I'm sorry.
17 I'm afraid that we might have -- you
18 might have answered on top of Ms. Shew's
19 objection. Could you repeat your answer,
20 please?

21 THE WITNESS: I agree.

22 MR. WINEMILLER: Okay. Thank
23 you.

24 BY MR. WINEMILLER:

25 Q. Now, moving down the glossary,

1 that's actually at the top of the next page --
2 it's in the next -- sorry. It's on the next
3 page. There's a definition of -- for
4 "transgender." And it defines "transgender"
5 as:

6 "A person whose gender identity
7 differs from the sex they were assigned at
8 birth."

9 Do you see that?

10 A. I see it.

11 Q. Did I read that correctly?

12 A. You did.

13 Q. Do you agree or disagree with this
14 definition?

15 MS. SHEW: Object to the form.

16 A. I think I agree with it.

17 Q. Okay. Thank you. I want to go back
18 to your credentials. And, in particular, on
19 Exhibit -- sorry; one, two, three, four, five.
20 This is the narrative.

21 You mentioned -- oh. This was
22 the Fellowship of the American College of
23 Obstetricians and Gynecologists. My question
24 is, Sir, do you hold any other fellowships?

25 A. No, Sir. I don't.

1 Q. Okay. And -- and we've gone over a
2 couple of your different credentials. Do you
3 have any other official designations or
4 credentials relating to your -- your practice
5 of medicine?

6 MS. SHEW: Object to the form.

7 A. No. That's all.

8 Q. Okay. I have some questions now
9 about your practice, Sir. You've been in
10 private practice since 1979, I think you just
11 testified? Is that right?

12 A. Yes.

13 Q. And in solo practice since 1984.
14 Correct?

15 A. Yes.

16 Q. And, I think I understand; but what
17 is the difference between private practice and
18 solo practice?

19 A. Well, the private practice of
20 medicine means -- you know, it may have meant
21 something -- it may mean something different
22 today than it did 40 years ago.

23 But, in general, you either worked
24 for a university; or you worked for the
25 Government; or you worked for some entity.

1 You worked for the VA. You worked for
2 somebody.

3 And those were people that were
4 attached to a larger institution, or you
5 worked for yourself. And that's private
6 practice. That's your -- private.

7 Now, most private practices, these
8 days -- and, really, from the time I went into
9 solo practice, most people in private practice
10 are in groups.

11 I don't know if you're a solo
12 lawyer, or whether you're in a group of
13 lawyers, but a group of lawyers would go, and
14 then they would -- they may have income based
15 on production. But, also, they also share
16 expenses.

17 And the doctors would do the same
18 thing. They would have production less
19 expenses. And that's -- but, in my case, I
20 went in as an employee of one doctor, and
21 then...

22 So, I was in private practice under
23 another doctor's office. And then four and a
24 half years later, I opened my own office. And
25 I've just -- I've been a -- a lone physician

1 in solo practice of obstetrics and gynecology
2 since 1984.

3 Q. Okay. Thank you. And how would you
4 describe the nature of your practice?

5 A. Well, that changes over years. I
6 was a very busy gynecologic surgeon. And very
7 busy, obstetrically, probably from '85 to
8 2005. Gradually, getting a little less busy.
9 And then, after 2005, a lot less surgery.
10 These days, do very little surgery compared to
11 what I used to do.

12 But -- so, things change as your --
13 the focus of your life changes. And a lot of
14 my friends quit delivering babies. I have
15 kept delivering babies. So, I still have a
16 fairly active obstetric practice. I delivered
17 the third baby this week today.

18 But, you know, a lot of people would
19 rather stop doing obstetrics and do something
20 different. But I -- so, surgically, I was a
21 very busy gynecologic surgeon for 30 years, I
22 imagine. And then a little less busy.

23 And, these days, I just do, oh,
24 probably three or four cases a month. I only
25 do what I want to do and send the cases out

1 that I -- that need to be done. So that's how
2 I would describe my practice.

3 But -- and I do a lot of
4 consultations, like you say. I let people
5 come in for other opinions, that, "So and so
6 thinks I need this. What do you think?" And I
7 can talk to them.

8 I have any -- and I'm a safe
9 consultation for a lot of doctors, because
10 they know I'm not going to steal their
11 patient. I'm not going to operate on them.
12 I'm going to tell them whether I think it's a
13 good -- a good plan or not.

14 That's a fair amount of what I do.
15 But I give -- I give a lot of second opinions.

16 Q. Okay. Thank you. Have you ever
17 practiced in any area other than OB-GYN?

18 A. If you look at my Exhibit 5, on the
19 first page -- internship -- I divorced in '77
20 and couldn't pay the bills. And my department
21 chief let me do emergency room work on the
22 side. Because I'd done a year of surgery.

23 And it was -- went against -- nobody
24 was allowed to do that. I was the first
25 person. But he wanted to keep me as a

1 resident, and he knew that if he -- otherwise,
2 I was going to have to leave and do something
3 else.

4 And so, I have many, many weekends I
5 spent in rural medicine, doing emergency room
6 work. So that's -- that's what I've done
7 outside of OB-GYN; is a lot of rural emergency
8 rooms.

9 But that's -- again, that's in the
10 old days. That's 45 years ago. So --

11 Q. Okay.

12 A. It's not something that I would have
13 expertise in today.

14 Q. Okay. And other than the emergency
15 room practice that you've had back in the day,
16 and now your OB-GYN practice, do you practice
17 in any other area?

18 A. No, I don't.

19 Q. Okay. Now, you served on the staff
20 of Vanderbilt Hospital from 1979 to 2005.
21 Correct?

22 A. I think so.

23 Q. Okay. And what medical services did
24 you provide at Vanderbilt?

25 A. I did very little surgery there.

1 Not more than a handful in all those years.
2 It was delivering babies. And it's usually
3 people that were nurses at Vanderbilt, that
4 wanted me to deliver them. And they had good
5 insurance for Vanderbilt.

6 So, it would probably be one or two
7 a month, for most of those years. It finally
8 got to where it was very few, and it was a lot
9 of trouble to go over there. So I phased
10 myself out over there.

11 Q. Okay. Did you work with any
12 transgender patients at Vanderbilt?

13 A. No, I didn't.

14 Q. Why did you leave Vanderbilt?

15 A. Well, I -- I was on staff so I could
16 deliver babies. And I left the staff because
17 I no longer wanted to deliver babies there.

18 Q. Fair enough. Okay. Have you ever
19 had any affiliation with Vanderbilt Center for
20 Transgender Health?

21 A. No.

22 Q. And you currently serve on the staff
23 of Centennial Medical Center. Correct?

24 A. Yes.

25 Q. And you have, since 1979. Is that

1 right?

2 A. Yes.

3 Q. Okay. And what kind of institution
4 is Centennial?

5 A. It's a large hospital. The hospital
6 that I really worked at was called "Westside
7 Hospital" in those days. And it was absorbed
8 into Centennial somewhere in the early '90s.
9 I couldn't -- couldn't tell you the date.

10 Because I was department chair at
11 Westside. And then after a while, I was
12 department chair at Centennial OB-GYN
13 Department. So, it was sometime in those
14 years. Early '90s, I think.

15 But -- but no. It's -- so, Westside
16 was a full service hospital, but was small.
17 And then, when they -- they turned it into a
18 women's hospital, and that's -- and all of the
19 services that were done at Westside are now
20 done in the main Centennial Hospital.

21 And it's mostly women and children
22 at the building that I'm in now.

23 Q. Okay. And the services that you
24 provided at Centennial, were they all as part
25 of your OB-GYN practice?

1 A. Yes.

2 Q. Okay. Do you know whether
3 Centennial offers medical services
4 specifically geared towards transgender
5 persons?

6 A. Not that I'm aware of.

7 Q. Okay. Now, you also serve on the
8 staff at St. Thomas, Midtown. Is that right?

9 A. That's right.

10 Q. And you --

11 A. It was a Baptist Hospital for most
12 of those days.

13 Q. Okay. And is it a General Hospital?

14 A. I think it does -- yeah. I would
15 say -- you know, St. Thomas, Midtown, I would
16 say, is very heavy in women's health services.
17 And its emphasis is -- it's -- one of their
18 big emphases is that.

19 If you look at the number of beds,
20 probably 25 percent of those beds are women's
21 health. If you look at Centennial, it's about
22 the same size hospital, but about 7 percent of
23 the beds are women's health.

24 So -- but it's got a big cancer
25 focus at Centennial. The Sarah Cannon Cancer

1 Center at that.

2 So, I mean, they are -- and then
3 they've got the Atrium. You know, there could
4 be some gender surgery at the Atrium. That's
5 not -- you know, it's part of the same
6 hospital, but it's a half mile away.

7 You know, it's a big campus that
8 we're on. So that's --

9 Q. Okay.

10 A. There may be some of that done at
11 Midtown. I honestly don't know.

12 Q. Okay. Is St. Thomas, Midtown part
13 of Ascension Health?

14 A. It is.

15 Q. Okay. And Ascension Health is a
16 faith-based healthcare organization,
17 affiliated with the Catholic church. Is that
18 right?

19 A. I think so.

20 Q. Okay. And, let's see. You also
21 serve as Medical Director of the Hope -- the
22 Hope Clinic for Women. Did I get that right?

23 A. Correct.

24 Q. Okay. And when did you start your
25 work with the Hope Clinic?

1 A. In the '80s.

2 Q. Okay.

3 A. Late '80s.

4 Q. And what kind of institution is the
5 Hope Center?

6 A. The Hope clinic is a place for
7 crisis pregnancy. They come in and get their
8 pregnancy diagnosed. They get an early
9 ultrasound; and they get a referral to an
10 obstetrics clinic or an obstetrician.

11 That's basically its function. It's
12 to take people -- a lot of people that, they
13 may be homeless, or -- and there are some good
14 clinics in Nashville that will take these
15 people in. Or they may be in abusive
16 situations. Crisis.

17 Hope Clinic is a wonderful,
18 wonderful place in Nashville. I've been
19 trying to get them to get a new Medical
20 Director for the last 10 years, and they are
21 too lazy to get one. So -- but one of these
22 days, I'm going to retire, and then they are
23 going to have to get one.

24 But I just -- basically, I sign the
25 ultrasound forms. And if they have a medical

1 question, they'll call me. But it's -- I
2 have -- it's an unpaid position, but I think
3 it's an important thing. It really helps
4 women in crisis pregnancies.

5 Q. Okay. Now, other than signing the
6 ultrasound forms, what other services do you
7 provide through the hope clinic?

8 A. I think they do some counseling.
9 They do -- actually, I don't know all the
10 counseling that they do. I'm the Medical
11 Director. And they've got a whole different
12 counseling area that I don't interface with at
13 all.

14 Q. Okay. Is the Hope Clinic for women
15 a faith-based organization?

16 A. It's a charity-based organization.
17 It's not affiliated with any church. Some of
18 the churches give it money. Private donors
19 give it money.

20 Q. Okay. Do you know whether the Hope
21 Clinic offers medical services specifically
22 geared towards transgender persons?

23 A. I have no idea.

24 Q. Okay. Have you, yourself, ever
25 provided medical services for a transgender

1 person?

2 A. No, Sir. I haven't.

3 Q. Okay. And have you, yourself, ever
4 treated a patient with gender dysphoria?

5 A. Maybe. Again, I've had a letter or
6 two written from people that I'd seen in the
7 past, that I couldn't even remember. Usually
8 thanking me for being nice to them, and
9 telling me -- I get letters from patients all
10 the time, with life stories that you wouldn't
11 imagine.

12 And I've had a few of those letters.
13 But, you know, you're supposed to be nice to
14 everybody. If you're nice to people, they'll
15 like you. They'll think okay about you.

16 Q. You mentioned in your declaration
17 that you've -- well, I guess like a lot of
18 professionals, served on various committees
19 over the course of your career.

20 Is that right?

21 A. Yeah. Correct.

22 Q. Okay. Have you ever served on a
23 committee that addressed the topic of gender
24 dysphoria?

25 A. No, Sir.

1 Q. Have you ever served on a committee
2 that addressed the topic of gender identity?

3 A. No.

4 Q. Have you ever served on a committee
5 that addressed the topic of sexual
6 orientation?

7 A. I've not served on a committee for
8 that. No.

9 Q. Is there a reason you hesitated in
10 answering just now?

11 A. Well, I deliver a number of same sex
12 couples. And I get along great with them.
13 And I rarely ask them who's what in
14 their group, because they're nice people, and
15 I'll be nice to them.

16 But -- so, I imagine I've interfaced
17 with a lot of such people. But, certainly,
18 not in a counseling way, or in a way of
19 providing advice. What I'm trying to do is --
20 is help a healthy mother and a healthy baby.

21 Q. Okay. Thank you. Have you ever
22 served on a committee that addressed the topic
23 of the prohibition of medical services to
24 transgender persons?

25 A. No, I have not.

1 Q. Okay. Now, I'm looking at paragraph
2 four of your declaration. You have not
3 authored any publications during the past 10
4 years. Correct?

5 A. Correct.

6 Q. Okay. And I want to make sure that
7 we're on the same wavelength here. What all
8 do you include in the term, "publications?"

9 A. I guess anything that's been
10 published in a medical journal.

11 Q. Okay. How about any books?

12 A. I have not written a book.

13 Q. Okay. How about blog posts?

14 A. Good grief. You know, I'm not on
15 any social media. And so, if people want to
16 mob me, they'll have trouble. Because I've
17 tried -- I am off the grid in that way.

18 Q. Well, some of us could be envious of
19 that, Dr. Traube.

20 A. Yes. I still have paper charts in
21 my office. So that's --

22 Q. Okay.

23 A. I told them if they can get my paper
24 charts, they can prise them out of my cold,
25 dead fingers. Because I'm not going to go

1 electronic for that.

2 Q. Okay. Prior to the last 10 years,
3 did you author any publications?

4 A. I have never authored a publication.

5 Q. Okay. Have you ever conducted
6 primary research during the past 10 years?

7 A. No.

8 Q. Have you conducted primary research
9 at any time during your medical career?

10 A. When I was a medical student, I
11 worked for one summer in the Department of
12 Physiology at Vanderbilt. And I am unaware of
13 whether any publications came out of that. I
14 worked in a lab for a physiologist there.

15 The next summer, I worked at the VA
16 Hospital in the Department of Experimental
17 Surgery, which I'm sure is so politically
18 incorrect, it doesn't exist now. But, back in
19 those days, we operated on various animals and
20 did things that I'm got going to tell you
21 about, but -- to them.

22 And then they wrote -- and I think
23 there was a man named "Buck Buchanan." He was
24 my -- he was the guy we did research for. But
25 I'm unaware. I mean, he never gave me a copy

1 of anything, or told me he published anything.
2 He may have.

3 There was a -- basically, we were
4 helping other people. We were helping
5 urologists that were putting kidneys in
6 various animals. They were working on
7 techniques; things like that.

8 Anyway, so I would have been
9 involved in research as a medical student, in
10 summer, to make a little money back in summer
11 of '72, maybe; and then in summer of '73. And
12 that's it.

13 Q. Okay. Thank you.

14 A. I doubt if I'm on any research
15 paper. Nobody ever told me that I had a name
16 in anything.

17 Q. Okay. And, according to your
18 declaration, you are an Assistant Professor at
19 the University of Tennessee Medical School.
20 Is that correct?

21 A. Correct.

22 Q. Okay. What subjects do you teach?

23 A. Well, they have a residency program,
24 University of Tennessee, at St. Thomas,
25 Midtown. And they have employed a number of

1 national obstetricians to work with the
2 residents, to help them increase their
3 talents.

4 And, basically, I work there two
5 Fridays every month. And I help them do
6 deliveries; and help them -- teach them the
7 concept of a delivery. And the concept of the
8 pelvis. And the concept of the mechanisms.

9 And, sometimes they'll call me if
10 they think they have a difficult delivery.
11 During the week, I may come and help them do
12 something, or tell them not to do it. But,
13 that's my function there.

14 Really, I kind of help the kids get
15 comfortable delivering babies.

16 Q. Okay. Is it fair to say that you do
17 not teach classes?

18 A. Once a year, I give a lecture on the
19 acute abdomen. It's like an appendicitis, or
20 something bad, penetrating injury or trauma in
21 a pregnant woman.

22 So, I'll give -- I'll give a lecture
23 once a year to the residents. And I usually
24 bring a surgeon with me. So that's all --
25 that is all my didactic teaching to the

1 residents. That's it.

2 Q. Okay. Apart from your teaching at
3 UT, do you give public presentations on
4 medical topics?

5 A. Every now and then, for the
6 St. Thomas -- they have a simulations
7 department. And simulations are very useful
8 to help people think through emergencies that
9 don't happen very often.

10 Because, like, say, the lawyers love
11 to have somebody make a -- make a problem --
12 have a problem, because they can think of
13 every second -- spend an hour of every second
14 that goes by.

15 But when you're in the realtime,
16 you've got to think your way through things as
17 they happen. And if you do it with a
18 simulator -- it's just like airline pilots.
19 If you do it with a simulator, time and time
20 again, that's very useful to practitioners.

21 And so, there's a simulation
22 conference -- there was going to be one this
23 year, but the virus wiped it out. Usually,
24 I'll help with -- I haven't done it a year or
25 two, but I'll help people with simulations,

1 usually with a different -- a difficult type
2 of delivery.

3 But these are practitioners. And
4 they'll come in and work with the simulators,
5 and I'll kind of talk to them as they do it.
6 I'm not really teaching them anything. I'm
7 just -- I'm helping them think through it.

8 That's my teaching.

9 Q. Okay. Have any of those simulations
10 involved a topic related to gender identity,
11 or gender dysphoria?

12 A. No. No, Sir.

13 Q. Okay.

14 A. They don't.

15 Q. Okay. And you don't have any legal
16 training, do you?

17 A. No.

18 Q. There's nothing wrong with it.

19 A. Oh, no. No. I'm just -- my father
20 worked hard to try to get me to go to law
21 school. And I diligently refused. So that's
22 it.

23 Q. Well, my father diligently tried to
24 get me to go to medical school, and you see --

25 A. And you diligently --

1 Q. -- where I am. Okay. Do you
2 consider yourself an expert in the field of
3 obstetrics and gynecology?

4 A. I do.

5 Q. Okay. Do you consider yourself an
6 expert in the field of psychiatry?

7 A. No.

8 Q. In psychology?

9 A. No.

10 Q. In neurobiology?

11 A. No.

12 Q. In endocrinology?

13 A. Can I say a little bit? But not --

14 Q. Sure.

15 A. But I'm not an expert. I'm not an
16 expert.

17 Q. Okay. And, are you an expert -- do
18 you consider yourself an expert on the subject
19 of gender dysphoria?

20 A. No.

21 Q. Do you consider yourself an expert
22 on the subject of gender identity?

23 A. No.

24 Q. And do you consider yourself an
25 expert on the subject of birth certificates?

1 A. No.

2 Q. Okay. Dr. Trabue, we've been going
3 about an hour and 20 minutes. Do you need to
4 take a break? Or would you like to take a
5 short break?

6 A. How much time do you think we've
7 got? How much time do you think we have to
8 go?

9 Q. I think that we're about half-way
10 through.

11 A. I think I'm good. I think I'm okay.
12 If you're going to go three more hours, I
13 might want a little stretch. But if you have
14 another hour and a half, I think I'm good.

15 MR. WINEMILLER: Anyone else on
16 the call need a short break? I'm just
17 trying to be courteous to everyone here.
18 If you do, just let me know.

19 BY MR. WINEMILLER:

20 Q. Okay. Let's see. I'm looking at
21 your declaration now. Paragraph 18. I'm just
22 going to read it into the record, and you can
23 tell me if I've read it correctly.

24 "My opinions are based on the
25 information I have been provided by

1 Defendants' attorneys -- including Plaintiffs'
2 Amended Complaint and Defendants' Motion to
3 Dismiss Amended Complaint -- and my education
4 and extensive professional experience of
5 having delivered approximately 12,000 babies
6 over the course of my 42 years as a practicing
7 OB-GYN."

8 Did I read that correctly?

9 A. You did.

10 Q. Dr. Trabue, what documents were you
11 provided by defense counsel?

12 A. The only documents they provided me
13 were documents that I was to sign. Such as
14 the one you just read.

15 Q. The declaration?

16 A. Yes.

17 Q. And did defense counsel prepare that
18 document for you to sign?

19 A. Yes.

20 MS. SHEW: Objection.

21 Q. Did you make any changes to the
22 document they gave you to sign, before you
23 signed it?

24 MS. SHEW: I object to the
25 form. And I also object to the extent

1 you're -- you're really getting close to
2 invading attorney/client privilege with
3 this witness -- with this expert.

4 MR. WINEMILLER: I think I'm
5 allowed to ask him if he prepared his
6 declaration.

7 THE WITNESS: So, the question
8 is?

9 BY MR. WINEMILLER:

10 Q. Did you add any language to the
11 declaration that was given to you to sign?

12 A. No.

13 Q. And you were given a copy of
14 Plaintiffs' Amended Complaint. Is that
15 correct?

16 A. I don't think so.

17 Q. Okay. In forming your opinion --
18 excuse me. One other question first.

19 Did defense counsel provide you
20 with any information, other than the drafts of
21 the report and declaration?

22 A. No.

23 MS. SHEW: Objection.

24 Q. In forming your opinion, Dr. Traube,
25 did you consider any documents other than --

1 well, did you consider any documents, period?

2 A. No.

3 Q. Just to be clear, you have not
4 reviewed any of the other expert opinions
5 disclosed in this case. Is that correct?

6 A. No, I have not.

7 Q. Okay. Thank you. And you are not
8 offering an opinion about the opinions
9 expressed by any of the other experts in this
10 case; are you?

11 A. No.

12 Q. Okay. Were you instructed to
13 assume -- assume any facts in preparing your
14 opinion?

15 A. Was I instructed to assume any
16 facts?

17 Q. Yes.

18 A. No.

19 Q. In preparing your opinion, did you
20 speak with the named defendants in this case?

21 A. No.

22 Q. Okay. And, in preparing your
23 opinion, did you speak with any other employee
24 of the state of -- the state of Tennessee,
25 other than defense counsel, who you've already

1 identified?

2 A. No.

3 Q. Okay. What aspects -- strike that.

4 If you turn, Dr. Trabue, to
5 paragraph 26 of your declaration? That's the
6 end of the declaration.

7 A. Okay.

8 Q. It's your opinion that a baby's sex
9 is simply a reflection of what the physician
10 observed at the time of birth. Correct?

11 A. Correct.

12 MS. SHEW: Object to the form.

13 Q. Would it be accurate to say that
14 determining a baby's sex is based on nothing
15 more than observing whether or not a baby has
16 a visible penis at the time of birth?

17 A. Yes.

18 Q. And the fact of the physician's
19 observation is contemporaneously recorded in
20 the baby's medical record. Is that right?

21 A. That's correct.

22 Q. Okay. What other information is
23 recorded in the baby's medical record?

24 MS. SHEW: Object to the form.

25 A. In the first place, I have nothing

1 to do with the baby's medical record, other
2 than what's in the mother's medical record.
3 You see, as soon as the baby is delivered,
4 it's no longer my patient.

5 So -- but, the medical record will
6 discuss the date; and the time; and the type
7 of delivery; and the health of the infant; the
8 weight of the infant; the sex of the infant.
9 And then, we'll also describe, very carefully,
10 the condition of the mother, and what we had
11 to do to help the mother, if we needed to.

12 It's -- it will be a delivery note.
13 And each -- every hospital will have their
14 own -- their own delivery note. And that's --
15 basically, I know that Ascension's delivery
16 note is different from Centennial's delivery
17 note, but they'll have that basic data on it.

18 That's all I can -- there may be
19 something I -- if you can bring up a sample
20 birth certificate, I'll see if what all they
21 have on it.

22 But a delivery note will basically
23 have the type of delivery; the condition of
24 the mother; the condition of the baby; and
25 whether the baby is male or female; and

1 whether the baby is healthy; whether the
2 mother is healthy. That's -- time and date.

3 That's, basically, what will be on
4 that record. Although there'll be -- may be
5 other embellishments that -- they'll talk
6 about sponge counts; and blood loss; urine;
7 other things.

8 There'll be plenty of other things
9 on the report.

10 Q. When you say "type of birth," what
11 do you mean?

12 A. Caesarean; versus easy vaginal;
13 versus a difficult delivery; versus a breech
14 delivery; or a vertex; or cephalic delivery.
15 Whether there's a complication in delivery, or
16 a complication with Caesarean.

17 Whether there's a history -- whether
18 the woman has any complication that's not
19 associated with the birth process, the uterus,
20 or the birth canal.

21 Whether the uterus bleeds too much;
22 or whether it's been damaged a lot; or whether
23 there's a bladder injury; or a rectal injury.

24 I mean, there are whole textbooks
25 written about things like this. I mean,

1 you just -- and each -- each -- each facility
2 will have their own take on how you record all
3 that.

4 Q. Okay.

5 A. At least the two that I work at.

6 Q. Okay. And that information that
7 you've just described, is that in the mother's
8 medical record? Or is that in the baby's
9 medical record?

10 A. The mother's.

11 Q. Okay. And are you -- let's see.
12 Who prepares the mother's medical record?

13 A. Well, it's a cooperative between the
14 delivery room nurses and me --

15 Q. Okay.

16 A. -- as the doctor.

17 Q. And who prepares the baby's medical
18 record?

19 A. Well, the delivery room nurse will
20 prepare most of it. If we need nursery
21 personnel to come for some reason, then
22 they'll prepare some of it.

23 Q. Okay. Would you, as the attending
24 physician, have a role in preparing the baby's
25 medical record?

1 A. Not in preparing it. No, Sir.

2 Q. Okay. Do you know, Sir, what the
3 purpose of the baby's medical record is?

4 A. I don't know how it would be
5 different from any person's medical record.

6 Q. Okay.

7 A. I cannot think how it might be
8 different.

9 Q. Okay. Dr. Trabue, a baby's medical
10 record is not the same thing as a birth
11 certificate. Is that right?

12 A. I bet --

13 MS. SHEW: Object to the form.

14 THE WITNESS: I'm sorry? Did
15 she say something? I couldn't hear.

16 MS. SHEW: Okay. I just made
17 -- Dr. Trabue, I just made an objection
18 to the form. You may answer his
19 question.

20 THE WITNESS: Okay.

21 Ask the question again. I'm sorry.

22 BY MR. WINEMILLER:

23 Q. Yes. A baby's medical record is not
24 the same thing as a birth certificate.

25 Correct?

1 A. As far as I know.

2 Q. Okay. It is not?

3 A. As far as I know, it's not.

4 Q. Okay. All right. Thank you.

5 MR. WINEMILLER: And, one
6 thing. Ms. Shew, we learned this
7 yesterday. If you hold down your space
8 bar, it temporarily takes off your mute.
9 So that might be an easy way to pop in
10 your objection.

11 MS. SHEW: That's actually what
12 I've been doing. I think I've just been
13 hanging up a little bit too quickly. So
14 I'll be more vigilant about keeping the
15 space bar down.

16 Thank you.

17 MR. WINEMILLER: Sure. Sure.

18 BY MR. WINEMILLER:

19 Q. And, Dr. Trabue, to the best of your
20 knowledge, the information recorded on a
21 baby's medical record is a different set of
22 information than information recorded on a
23 birth certificate.

24 Is that right?

25 A. I don't -- I honestly don't know the

1 differences and similarity. You'd have to --
2 have to talk to the people that prepare birth
3 certificates. I honestly am -- I'm out of
4 that loop at this point.

5 I don't know. I would imagine that
6 it would have some of the information that I
7 used to see when I would sign them. But it's
8 been over 20 years since I've signed them.
9 And I don't know what's been added or
10 subtracted in 20 years.

11 I honestly don't know what the
12 likeness and what the dislike -- what the
13 dissimilarities would be. I don't know.

14 Q. Okay.

15 MR. WINEMILLER: I think I need
16 to take just a short break here,
17 everyone. So, let's come -- it's -- I've
18 got 32 minutes after the hour. Let's try
19 to come back in five minutes.

20 Does that work for everyone?

21 THE WITNESS: Yes.

22 MR. WINEMILLER: All right.

23 Thank you.

24 (Short break.)

25 BY MR. WINEMILLER:

1 Q. Dr. Trabue, were you born in
2 Tennessee?

3 A. Yes.

4 Q. And do you have a copy of your birth
5 certificate, by chance?

6 A. You know, I think I took it to get
7 my passport. It might be in a lock box
8 somewhere. You'd have to -- Mrs. Trabue has
9 all that.

10 But I know I've got a passport, and
11 I bet I probably used it for that. It's
12 been -- I don't know how many years passports
13 are good for, but it's probably been eight or
14 10 years ago.

15 I know I've got a passport, because
16 I made a trip to Europe about six, seven years
17 ago. And I already had it by then. So, I bet
18 it's around somewhere.

19 Q. Okay. And do you recall what
20 information was contained on your birth
21 certificate?

22 A. No. I do not.

23 Q. Okay. Do you consider your birth
24 certificate to be one of your medical records?

25 A. No.

1 Q. Okay. And, as a general
2 proposition, birth certificates are not
3 medical records, are they?

4 A. No.

5 MS. SHEW: Object to the form.

6 Q. Okay. Dr. Trabue, do you know
7 whether any law or regulation in the state of
8 Tennessee dictates that a child's sex is
9 determined by their external genitalia?

10 MS. SHEW: Object to the form.

11 A. So, the question is, does a law --
12 I'm unaware of any law that says that.

13 Q. Okay. If you turn with me, Sir, to
14 paragraph 19 of your declaration? And I'll
15 read that and ask you to tell me if I read it
16 correctly.

17 "In the overwhelming majority
18 of cases, a baby's sex is determined at birth
19 by visual observation of his or her external
20 genitals. In fact, in my 42 years of
21 practice, I have delivered only a handful of
22 babies whose sex could not be instantly
23 determined by looking at their external
24 genitals."

25 Did I read that correctly?

1 A. You did.

2 Q. And what did you mean by
3 "overwhelming," as you used that term in
4 paragraph 19?

5 A. What's the question?

6 Q. Oh. I want to know what you mean by
7 "overwhelming majority," as you use that term
8 in the paragraph?

9 A. Well, like I said, when it's a
10 handful of babies, probably no more than --
11 than a couple -- two or three -- in all these
12 years, that we couldn't tell immediately.

13 Q. Okay. So, it's true, then, that a
14 baby's sex cannot be determined by observing
15 the external genitals in one hundred percent
16 of the cases. Is that right?

17 A. Correct.

18 Q. Okay. But do you agree that
19 external genitalia are sex-related
20 characteristics?

21 MS. SHEW: Object to the form.

22 A. The external genitalia are
23 sex-related characteristic -- physical
24 sex-related characteristics; yes.

25 Q. Okay. Thank you. And you testified

1 just a minute ago, that you -- you can recall,
2 what did you say -- two or three cases in
3 which you could not observe external genitals
4 on a baby at birth?

5 MS. SHEW: Object to the form.

6 A. Very few. And it's been a long time
7 since anything like this has come up in my
8 practice. It's --

9 Q. Okay.

10 A. -- vanishingly few.

11 Q. And in those very few cases, what
12 did you contemporaneously note in the medical
13 record?

14 A. In the medical record, we put
15 "undetermined," and sent the baby to the
16 nursery. And the pediatricians would decide
17 what -- what the gender would be. Or not be.
18 I mean, that's -- that becomes a job for the
19 expert. And the pediatrician would be the
20 expert.

21 Q. Okay. And you are not a
22 pediatrician. Correct?

23 A. Absolutely. Right.

24 Q. Okay.

25 A. Correct.

1 Q. And do you know what the birth
2 certificates for those children indicate?

3 A. I do not.

4 Q. Okay. Do you know whether the
5 medical records were changed after the
6 pediatrician determined the sex of the child?

7 A. You're asking me if the medical
8 record was changed after the pediatrician
9 looked at the child? Is that --

10 Q. Correct.

11 A. -- the question?

12 Q. Yes. Do you know?

13 A. It would not be changed.

14 Q. Okay. In those cases -- and I'm
15 looking at the next paragraph of your
16 declaration -- paragraph 20 -- do you know how
17 the baby's -- or the pediatrician determined
18 the sex of the baby?

19 MS. SHEW: Object to the form.

20 A. No. I do not.

21 Q. And in those cases, do you know when
22 the pediatrician determined the sex of the
23 baby?

24 A. No.

25 Q. But it's true, isn't it, that at

1 least with respect to those cases, the
2 determination of the child's sex occurred
3 after the delivery. Correct?

4 A. Correct.

5 Q. Okay. I'm going to question now
6 about paragraph 21 of your declaration. And
7 I'll just ask you to read that to yourself.

8 [Witness perused document]

9 A. I've read it.

10 Q. Okay. I'm going to ask you the same
11 question I asked with respect to one of the
12 previous paragraphs. When you use the phrase,
13 "overwhelmingly determined," in the first
14 sentence, what did you mean by
15 "overwhelmingly?"

16 A. Actually, the word "overwhelming"
17 might not be necessary. It might just say
18 that, "the baby's sex at birth can be
19 determined by examining his or her chromosomal
20 make up."

21 You could do -- you could do without
22 that word.

23 Q. Okay. Are there any cases in which
24 you could not determine the sex of a baby by
25 examining the chromosomal make up?

1 A. Not that I'm aware of.

2 Q. Okay. But do you agree that sex
3 chromosomes are a sex-related characteristic?

4 A. Sex chromosomes are --

5 MS. SHEW: Object to the form.

6 A. Sex -- sex chromosomes are a what?

7 Q. Sex-related characteristic.

8 A. Yes.

9 Q. Okay. And after a chromosomal test
10 is performed, would the results be added to
11 the baby's medical record?

12 MS. SHEW: Object to the form.

13 A. I guess any medical test would be
14 added to the medical record. Whether it's a
15 chromosome or -- any medical test done on the
16 baby would be part of the baby's medical
17 record.

18 Q. Okay. Dr. Trabue, the term,
19 "disorder of sexual development" refers to
20 various congenital conditions associated with
21 atypical sexual development. Is that right?

22 A. Which -- are you reading this from a
23 paragraph?

24 Q. No.

25 A. Oh.

1 Q. Well --

2 A. So, ask the question. I'm sorry. I
3 was looking for it.

4 Q. Oh. Sure; sure. The term I'm
5 asking about is "disorder of sexual
6 development." And I'm asking whether that
7 term refers to various congenital conditions
8 associated with atypical sexual development.

9 A. I really can't answer that question.

10 Q. Okay. And you may not be able to
11 answer this one either, but I'm going to ask
12 it and you just tell me. Would you agree that
13 a chromosomal disorder is an example of a
14 disorder of sexual development?

15 A. A chromosomal disorder is what?

16 Q. An example of a disorder of sexual
17 development.

18 A. I don't know.

19 Q. Okay. And let me ask this question,
20 not using that term. In the case of a person
21 born with a chromosomal disorder, is it
22 possible for their sex to be recorded at
23 birth, different from their chromosomal make
24 up?

25 A. I don't know.

1 Q. Okay. And would you agree that some
2 people who are born with ambiguous genitalia
3 sometimes undergo genital surgery to better
4 reflect their gender?

5 MS. SHEW: Object to the form.

6 A. You know, that's best asked to a
7 pediatrician.

8 Q. Okay. If you would look at
9 paragraph 22 of your declaration, Sir, you
10 say:

11 "Surely, I am aware of certain
12 genetic conditions that cause a chromosomal
13 make up that is something other than XX or XY.
14 But, even in those rare instances or --"

15 Excuse me.

16 "-- but even in those rare
17 cases, the presence or absence of the Y
18 chromosome overwhelmingly determines the
19 baby's sex at birth."

20 Did I read that correctly?

21 A. That's correct. And that is my
22 understanding.

23 Q. Okay. And it's the same question I
24 asked before. What did you mean by
25 "overwhelmingly," as used in that sentence?

1 A. It's probably superfluous.

2 Q. Okay. Is it true, Dr. Trabue, that
3 a baby's sex cannot be determined by the
4 presence or absence of the Y chromosome in one
5 hundred percent of the cases?

6 A. I don't know.

7 Q. Would you agree, or disagree, that
8 there is a lack of consensus in the medical
9 community about the assignment of sex for some
10 people with ambiguous genitalia,
11 notwithstanding the presence of Y chromosomes?

12 A. I would agree with lack of consensus
13 in medicine about everything, including this.
14 This is no different from any other medical
15 topic.

16 Q. Okay. Dr. Trabue, what is the
17 condition called, "perineoscrotal
18 hypospadias?"

19 A. Again, you're -- this is something
20 that I -- that is often diagnosed in the
21 nursery. Certainly, not by us.

22 But it would be -- I think that
23 other thing, what is called -- it might be an
24 undescended testicle; where the testicle
25 resides at some point along the spermatic

1 cord. You'd have to ask the urologist. And
2 it depends on how high up it is, as to
3 whether -- how functional it is.

4 Anyway, I know very little about it,
5 other than it exists.

6 MR. WINEMILLER: Can we take a
7 short break, please? Five minutes? I
8 think we may be kind of ironing some
9 things out. So, off the record and back
10 on in five minutes.

11 THE WITNESS: Very good.

12 (Short break.)

13 BY MR. WINEMILLER:

14 Q. Okay. Earlier, you testified that
15 external genitalia and sex chromosomes are
16 sex-related characteristics. Right?

17 MS. SHEW: Same objection.

18 A. Right.

19 Q. Would you agree that there are
20 multiple sex characteristics?

21 MS. SHEW: Object to the form.

22 A. In a baby, I'm certain there would
23 be. But I would not be qualified to discuss
24 them.

25 Q. Okay. Would you be qualified to say

1 whether you agree that pubertal hormones are
2 sex-related characteristics?

3 MS. SHEW: Object to the form.

4 A. At puberty?

5 Q. Yes, Sir.

6 A. Yes.

7 Q. Okay. And would you agree that the
8 development of breasts is a sex-related
9 characteristic?

10 MS. SHEW: Object to the form.

11 A. Yes.

12 Q. And would you agree that sex
13 characteristics are sometimes referred to as
14 "primary" and "secondary" characteristics?

15 A. That's not how I learned them, but I
16 don't have an argument with that.

17 Q. Okay. And are examples of primary
18 sex characteristics, sex chromosomes, gonads,
19 sex hormones, internal genitalia, and external
20 genitalia?

21 MS. SHEW: Object to the form.

22 A. I would say yes.

23 Q. And are examples of secondary sex
24 characteristics pubic hair, enlarged breasts,
25 and widened hips in females. And pubic hair,

1 facial hair, and Adams apples in males?

2 MS. SHEW: Object to the form.

3 A. You know, I wouldn't say that either
4 list you gave me would be encyclopedic. But
5 they would -- those things would be on those
6 lists. But, again, I'm not qualified to give
7 you a complete list of either.

8 Q. Okay. Fair enough. Dr. Traube, not
9 all primary sex characteristics are visible in
10 babies at the time of birth. Correct?

11 MS. SHEW: Object to the form.

12 A. You know, I would say the sex
13 characteristic in the delivery room would be
14 the presence of a penis, or what appears to be
15 a vagina. Those would be the sex
16 characteristics that would be used in the
17 delivery room to assign a sex to the infant.

18 Q. And those would be the sex
19 characteristics that were visible, or not, in
20 babies at the time of birth. Correct?

21 A. At the time of birth.

22 Q. Okay. And no secondary sex
23 characteristics are visible in babies at the
24 time of birth, of course. Right?

25 MS. SHEW: Object to the form

1 of the question.

2 A. Correct.

3 Q. Okay. Turn with me, if you would,
4 to paragraph 23 of your declaration, Sir.
5 I'll read that, and you can tell me if I've
6 read it correctly:

7 "Birth of a baby can be a
8 complex medical procedure, and the mother's
9 medical record reflects the serious nature of
10 the procedure. A medical record cannot be
11 changed."

12 Did I read that correctly?

13 A. You did.

14 Q. And here, you're talking about
15 medical records. Not birth certificates.
16 Correct?

17 A. Correct.

18 Q. Okay. And paragraph 24:

19 "Of course, the baby's sex at
20 birth is an important part of his or her
21 medical record. But the baby's sex at birth
22 is not any more difficult to determine than
23 the other data that make up the rest of the
24 medical record. Indeed, determining the
25 baby's sex at birth is akin to noting the

1 baby's birth weight, height, date and time of
2 birth, and physical condition."

3 Did I read that correctly?

4 A. Yes. I would amend that and say,
5 instead of "height," you would say "length."
6 Weight, length, date, time, and physical
7 condition.

8 Q. Okay. They are largely horizontal
9 at that age, aren't they?

10 A. They are.

11 Q. Okay. Now, in the first sentence of
12 that paragraph, are you referring to the
13 baby's medical record when you write, "his or
14 her medical record?"

15 A. Yes.

16 Q. Now, you do not have a role in
17 preparing the baby's medical record. Correct?

18 MS. SHEW: Object to the form.

19 A. At the time of delivery, I am the
20 physician present. There will be a nurse
21 assisting me, and another nurse to take the
22 baby. And the nurse will comment, and we will
23 all, you know, be viewing the baby and the
24 mother.

25 And so, I will be the physician of

1 record in the room. And there has to be a
2 physician of record in the room. Until, or
3 unless, one of the officials from the nursery
4 is summoned to the room.

5 So, I will be the physician of
6 record at birth for that baby, for the
7 temporary time that the baby is in the
8 delivery room with the mother.

9 Q. And I'm not meaning to be obtuse
10 here, but do you prepare any part of the
11 baby's medical record?

12 MS. SHEW: Object to the form.

13 A. I do not prepare it, but I agree
14 with it.

15 Q. What do you mean, you agree with it?

16 A. Medicine is a personal -- very
17 personal occupation. And we're talking among
18 ourselves. They'll say, "Dr. Traube, it's
19 this." And I will say, "Look at that."

20 We will -- it's a communal thing.
21 So that, it's me and several nurses are doing
22 or preparing both a description of the mother
23 and the baby, unless we need other people to
24 come in and assist.

25 And, sometimes a nursery personnel,

1 a group, or a physician, or a physician
2 assistant, or nurse practitioner, from the
3 nursery, will come, and that person will
4 certainly take over for the baby.

5 But I will -- but I am the physician
6 of record in the room, until I'm not. Until
7 someone else comes in and assumes that.
8 That's -- I guess that's the best answer I can
9 give you.

10 I am not really preparing the
11 record, but I am assisting and supervising the
12 person who is preparing the record.

13 Q. Okay. Thank you. Now, medical
14 records are not public documents. Correct?

15 A. Yes.

16 Q. Okay. And they are governed by
17 HIPAA these days. Correct?

18 A. Yes.

19 Q. Okay. And medical records are not
20 legal documents, are they?

21 MS. SHEW: Object to the form.

22 A. So, your question is, medical
23 records are not legal documents?

24 Q. Correct.

25 A. And my answer is, they can be.

1 Q. Okay. Are they government
2 documents?

3 MS. SHEW: Object to the form.

4 A. They are documents that can be used
5 in -- in lawsuits, and presented to the court.
6 And that would be a legal document.

7 Q. Once it's presented to the court,
8 you mean?

9 A. That's what malpractice law is, Sir.
10 That's -- we argue about the medical record.

11 Q. And --

12 A. Whether it was -- whether it was --
13 whether that was faulty, or whether the care
14 we've given was documented.

15 I mean -- so, it is -- it is a
16 personal record. And it is private unless it
17 is released as -- to the Court to decide
18 whether a malpractice happened. And then it
19 goes -- so, I mean, I guess -- I mean, you're
20 the lawyer. You would know whether that's
21 legal or not.

22 It would seem to me it would be, but
23 I'm told -- I'll tell you this. When the
24 people give me medical records to review,
25 there are all kinds of warnings all over it,

1 that, "This can't be viewed by anybody else;"
2 and to destroy it; and -- you know, it's a big
3 deal.

4 Q. Okay. Now, medical records do not
5 belong to the Government, do they?

6 A. You know, if a judge says it does,
7 it does, I guess. But, I mean, in general, it
8 belongs to the hospital.

9 Q. Okay. And are medical -- excuse me.
10 Do medical records serve as
11 identification documents?

12 A. I would --

13 MS. SHEW: Object to the form.

14 A. I don't know if I can answer that
15 question, entirely. Because we'll get unnamed
16 patients at the hospital that don't speak
17 English. And maybe sometimes they are used.

18 I've had people come in -- after
19 we've delivered babies, we've had social
20 workers, and other people from Metro, come and
21 view -- I don't know.

22 Particularly if there's drugs
23 involved. You know? It's a -- I mean,
24 it's -- you're talking about an area that, in
25 a perfect world, you're exactly right. But,

1 you know, when I'm supervising the residents
2 at St. Thomas, Midtown, it's not a perfect
3 world.

4 Q. Okay. Let's look at paragraph 25 of
5 your declaration. I'll read it.

6 "Nevertheless, because it is a
7 medical determination made at the time of
8 birth, the baby's sex designation at birth, as
9 recorded in the medical record or on the birth
10 certificate, cannot and should not be later
11 changed."

12 And I inverted "later" and "be"
13 right there.

14 "The baby's sex is a part of
15 the medical record. It must not change so
16 that it will always accurately reflect what
17 happened during the birth procedure."

18 Sir, did I read that correctly,
19 with the exception of those interchanged
20 words?

21 A. You read it correctly. Yes, Sir.

22 Q. Okay. Thank you. Now, Dr. Trabue,
23 it's not true, is it, that a baby's sex
24 designation is always a medical determination
25 made at the time of birth. Correct?

1 A. I am just talking about what we do
2 in the delivery room. That's all I'm talking
3 about.

4 Q. And I'm asking -- and I'm asking, in
5 the delivery room -- even in the delivery
6 room, it's not true that the baby's sex
7 designation can be made at the time of birth?

8 MS. SHEW: Object to the form.

9 A. Maybe I'll answer it -- I'll say, it
10 can be unless it can't.

11 Q. Okay.

12 MR. WINEMILLER: I think that
13 might be all I have. Let me do a
14 breakout, Ms. Shew, and then we'll decide
15 whether we need to turn it over to you,
16 or ask any follow ups.

17 MS. SHEW: That's fine. Five
18 minutes?

19 MR. WINEMILLER: Yes. Thank
20 you. Off the record.

21 (Short break.)

22 THE WITNESS: Okay. I would
23 say that counsel has asked me to tell you
24 that they did send me an amended
25 complaint on March 17th, and I do have

1 it in my email.

2 I don't know if I remember reading
3 it or not, but I do have it present in my
4 email, that I'd forgotten about.

5 So, when you asked if there was any
6 other material, and I said I didn't think
7 so, I actually did have a 30 -- I know I
8 didn't read it, because it's 41 pages.
9 And -- anyway, but I did get it.

10 MR. WINEMILLER: Okay. Fair
11 enough.

12 BY MR. WINEMILLER:

13 Q. Dr. Trabue, changing a birth
14 certificate would not result in changing a
15 medical record. Correct?

16 MS. SHEW: Object to the form.

17 A. Again, I don't know. That would be
18 a law issue. Not a medical issue.

19 MR. WINEMILLER: Okay. I know
20 you'll be disappointed to hear this,
21 Dr. Trabue, but that's all the questions
22 I have for you today. And I appreciate
23 your time. Now --

24 THE WITNESS: You know, I can't
25 think of a better cross-examination that

1 I can have. I appreciate your kindness
2 to me. So --

3 MR. WINEMILLER: Well, thank
4 you very much. You've been a pleasure to
5 speak with.

6 Now, Ms. Shew may have some
7 questions for you.

8 RE-DIRECT EXAMINATION BY MS. SHEW:

9 Q. Dr. Trabue, just very quickly, you
10 had corrected the record a little bit by
11 saying that you had received the amended
12 complaint in this case from us.

13 Did you also receive a motion
14 to dismiss --

15 A. Let me look. Let me just -- wait a
16 second. Let me -- this was in March?

17 Q. Yes, doctor.

18 A. Yes, I've got it.

19 Q. Okay. All right. That's -- that's
20 the only follow up I have, John.

21 MR. WINEMILLER: Okay. Thank
22 you.

23 FURTHER EXAMINATION BY MR. WINEMILLER:

24 Q. And one quick follow up to that.
25 Just to be clear. Other than those two

1 documents you've now identified, and the --
2 and the drafts of your expert report and
3 declaration, did you receive any other
4 documents from defense counsel?

5 A. I'm looking right now. I don't have
6 anything more from them. No, Sir.

7 MR. WINEMILLER: That's all I
8 have. Thank you very much for your time,
9 Sir.

10 THE WITNESS: Yes, Sir. Thank
11 you.

12 MR. WINEMILLER: Thank you
13 everyone else.

14 MS. SHEW: Thank you.

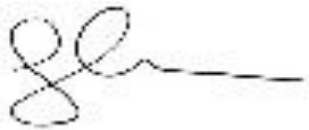
15 (Whereupon, the deposition adjourned
16 at 2:31 p.m.)
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C E R T I F I C A T E

I, Giselle Mitchell-Margerum, RPR, CRI, CCR, Licensed Court Reporter, Tennessee, do hereby certify that the witness was first duly sworn by me and that I was authorized to and did report said proceedings.

I further certify that the foregoing transcript is a true and correct record of the proceedings; that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision; that reading and signing was requested; and that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition was taken; and that I have no interest, financial or otherwise, in this case.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of May, 2020.



GISELLE MITCHELL-MARGERUM, RPR, CRI, CCR, LCR

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CERTIFICATE OF DEPONENT

I, ANTHONY TRABUE, hereby certify that I have read the foregoing pages, numbered 1 through 107, of my deposition of testimony taken in these proceedings on Thursday, May 21, 2020 and, with the exception of the changes listed on the next page and/or corrections, if any, find them to be a true and accurate transcription thereof.

Signed:

Name: ANTHONY TRABUE

Date:

ERRATA SHEET

Case Name: Kayla Gore, et al. v. William Byron Lee, et al.

Witness Name: ANTHONY TRABUE

Date:

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Subscribed and sworn to before

me this date day of month , 2020.

ANTHONY TRABUE

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